
From: Nejako, Henry (TRI)
To: Marner, Abbe (TPE); Ossi, Joseph (TPE); Braegelmann, Carol (TPE); Borinsky, Susan (TPE)
Sent: 9/27/2004 3:43:39 AM
Subject: FW:Kailua Hawaii Reporter article: Honolulu began project without federal approval, breaking federal rules and undermining the city's application

BRT Bust - Federal Government Refuses to Fund City Bus Rapid Transit Project, Citing Illegal Action by Harris Administration

Opponents Concerned About City's Illegal Actions, Consequences on the Taxpayers; Question Why the Federal Government Took So Long to Get Involved

By Malia Zimmerman

Kailua Hawaii Reporter

9/24/2004

The Federal Transportation Administration this week refused to fund \$20 million of a \$51 million city transportation project, saying in a letter to the city, that the administration of Honolulu Mayor Jeremy Harris began the project without federal approval, thereby breaking federal rules and undermining the city's application. The federal government initially considered funding the city's request, but rescinded the offer.



U.S. Department
of Transportation
Federal Transit
Administration

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SEP 20 2004

Mr. George Miyamoto
Acting Director
Department of Transportation Services
City and County of Honolulu
650 South King Street, 3rd Floor
Honolulu, HI 96813

Re: Rescission of Record of Decision
Primary Corridor Transportation Project
Initial Operating Segment

Dear Mr. Miyamoto:

The Federal Transit Administration (FTA) regrets to inform you that it is rescinding its Record of Decision (ROD) of October 23, 2003 for the Initial Operating Segment (IOS) of the Primary Corridor Transportation Project. FTA has determined the IOS project to be ineligible for FTA funding.

Unfortunately, the Department of Transportation Services' (DTS) actions to begin incurring costs in the final design and construction of the IOS absent required FTA approvals precludes further FTA participation in the IOS project. The City's implementation of design and construction of the IOS project or any part thereof, as the IOS is defined by the FTA's October 23, 2003 Record of Decision, has not followed FTA's Section 5309 New Starts program requirements such as inclusion in the federally-approved state transportation improvement program; FTA approval to enter final design, a Letter of No Prejudice or grant award. FTA's program requirements, which have been known and shared with DTS repeatedly, are clearly set forth in law, regulations, and agency guidance. (See 49 USC 5309(d), 23 CFR 450.216(a)(6), 23 CFR 450.222(a), 49 CFR 611.7, and FTA Circular 9300.1A Chapter V section 3 and Chapter VI section 2).

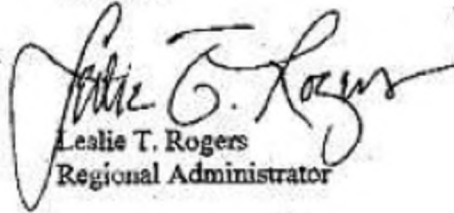
In addition, the incurrence of costs on the IOS project has not followed FTA's Section 5309 Bus and Bus Facilities program requirements that also mandate inclusion in a federally-approved state transportation improvement program prior to the incurrence of cost. On September 17, 2004, FTA disapproved the State's request to amend the IOS project into the federally-approved statewide transportation improvement program due to the City's failure to meet FTA requirements as noted above.

FTA staff has provided numerous and consistent notice of the consequences of the City's action to move the IOS project forward without necessary FTA approvals. In a teleconference call in December 2003, we communicated our concern about this matter and recommended delay in the award of your construction contracts. Our communication about this issue was frequent and consistent.

Therefore, because the IOS project is no longer eligible for FTA funding participation and, therefore, there is no Federal "action", as defined by 23 CFR Section 771.107(b), a Record of Decision under the National Environmental Policy Act is no longer appropriate and that Record of Decision dated October 23, 2003, is rescinded.

If you have any further questions, please call me at (415) 744-3133.

Sincerely,



Leslie T. Rogers
Regional Administrator

cc: Gordon Lum, OMPO
Abraham Wong, FHWA

The \$51 million project, phase 1 of the \$1 billion Bus Rapid Transit Project Mayor Harris is pushing, was approved in 2001 by the Honolulu City Council on the basis of Harris' promise that \$20 million in matching federal funds would follow, if the council authorized \$31 million in city expenditures.

Council members, many not in office when the original project was approved, learned in 2004 Harris never even applied for the federal funds all through those years -- 2001, 2002, 2003 and 2004 -- despite the fact that he used the enticement of federal funds as the primary incentive for the project.

After this fact became public, first reported in Hawaii Reporter, Harris justified his actions saying it is easier to complete the BRT project without federal funding in order to avoid federal EPA guidelines and federal regulations more stringent than the city's. He continued to parcel the project, in order to avoid any problems from the federal government, despite the question of whether the practice is even legal. His main focus -- get the project completed before he leaves office for good because of term limits this December.

Community groups and those in the transportation industry, many opposed to the project from the beginning, were outraged about his attempt to circumvent federal scrutiny, and continued to protest the construction, which is still causing considerable traffic and other environmental problems throughout Waikiki. Tourists, some coming to Hawaii for the first time, also continue to complain about the noise, dust and traffic.

The city eventually did apply for federal funding, just months ago, despite a new city council voting 5 to 4 on a resolution asking the city to halt construction plans and cancel plans for the BRT. The mayor ignored the request, saying he had no intention to stop the project despite mounting and overwhelming opposition.

The Alliance for Traffic Improvement, a group encompassing all of the private transportation companies in the state and concerned citizens, and Enoa Tours, a private tour company whose owner says the company will be put out of business by the BRT, took separate cases to federal court against the city and federal government. Enoa Tours lost round one in court, but The Alliance for Traffic Improvement will have another hearing in November 2004 on the basis of newly discovered evidence against the city showing the federal government has serious concerns about the

project.

With increasing pressure on the federal government to look more closely at the city's BRT and the way the city has handled the project - initiated before having federal approval and avoiding federal regulations by parceling -- the federal government issued a letter refusing to fund the \$20 million request.

The refusal of the federal government to fund the project will only help the Alliance for Traffic Improvement's case, which seeks to stop the project all together.

Citizens Say Mayor Had Bad Attitude from the Beginning

A major part of the problem is Harris' handling of the project, which ultimately is undermining his \$1 billion grand plan.

The city began earlier this year to tear up Kuhio Avenue, one of the main thoroughfares in Waikiki. The city also rushed to formally acquire Ala Moana Boulevard, now owned by the state, so the construction crews could start work on Kalia Road and Ala Moana Boulevard, regardless of the liability the city would incur from one of the busiest roads in the state.

Harris insisted on establishing the BRT on Oahu beginning in Waikiki, despite overwhelming protest against the in-town portion of the project by residents, businesses on the route and those in the private transportation industry. The rural portion of the BRT was not objected to by any group or individual, yet the city opted to start the project where there was by far the most dissention. He also began parceling the project without federal approval in order to avoid having to abide by federal regulations and EPA requirements, despite the question of legality. And his Department of Transportation Services ran over private operators who requested that the city not run the BRT through Waikiki, where there already are sufficient private transportation options. Operators claim the city's BRT will put them out of business, and other visitor related companies claim the BRT will cause and is causing such a backlog of traffic, that their businesses also are being damaged. In addition, government watchdog groups have voiced concerns over Harris' hiring of many of his friends in the consulting and construction industries -- friends who have made considerable donations to the Harris campaign and have, in some cases, been subsequently fined for breaking state campaign spending laws.

Mayor Says He Will Move Project Ahead Anyway, Circumvent Federal Agency

The mayor, however, did not seem phased by the federal government's decision.

He announced he'd circumvent the federal department that refused to fund his project and go to Hawaii's senior U.S. Senator Daniel Inouye to reapply for funding.

Opponents Concerned About Lack of Accountability

Private entities opposed to the project, and some city council members, still say the mayor needs to be held accountable for his actions, his deception on the public, and his broken promises as does the federal government for its slow action.

Concerned citizens groups say they also are concerned about the illegality of the city's actions and the consequences for the city taxpayers.

They also question why the federal government took so long to get involved, when all along, the FTA has been issuing letters and emails to the city noting its grave concern over the way the project was proceeding.

[Nejako, Henry (TRI)] -----Original Message-----

From: Luden, Hymie (TRO-09)

Sent: Friday, September 24, 2004 5:34 PM

Subject: FTA article: Honolulu's illegal action after choosing not to apply lost a \$20M lapsing earmark